

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ANDRE KELLEY,

Plaintiff,

v.

Civil No. 9:01-CV-1926  
(GLS/GJD)

GLENN S. GOORD, Commissioner of  
DOCS; FLOYD BENNETT, Superintendent,  
DOCTOR CHEW<sup>1</sup>; M.L. HOLLINS,  
Superintendent; DOCTOR SEN; RAY  
GODY, IGRC, Supervisor,

Defendants.

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APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

ANDRE KELLEY  
Plaintiff *Pro Se*  
00-B-1596  
Mohawk Correctional Facility  
6100 School Road, Box 8451  
Rome, New York 13442

FOR THE DEFENDANTS:

HON. ELIOT SPITZER  
Attorney General, State of New York  
615 Erie Blvd. West, Suite 102  
Syracuse, NY 13204-2455

MARIA MORAN  
Assistant Attorney General

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<sup>1</sup> Doctor "Chew" is actually Dr. Cheng Yin, M.D. He has been served and has appeared by counsel in this action.

**Gary L. Sharpe  
U.S. District Judge**

**MEMORANDUM-DECISION AND ORDER**

**I. Introduction**

Plaintiff *pro se* Andre Kelley brings this action pursuant to 42 U.S.C. § 1983. Kelley alleges that his constitutional rights were violated when the defendants failed to provide him with adequate medical care and access to the courts. Although Kelley has objected to the Report-Recommendation of Magistrate Judge Gustave J. DiBianco's Report-Recommendation, those objections are nothing more than a reiteration of the allegations in his complaint and add nothing new for this court to consider. Upon careful consideration of the objections, the relevant parts of the record, and the applicable law, and having conducted a *de novo* review, the court adopts the Report-Recommendation in its entirety.

**II. Procedural History**

Kelley commenced this action on December 17, 2001. *Dkt. No. 1.* On January 28, 2004, the defendants moved for summary judgment. *Dkt. No. 49.* On October 8, Judge DiBianco issued a Report-Recommendation which recommended granting the defendants' motion and dismissing

Kelley's complaint in its entirety. *Dkt. No. 55.* Kelley objected. *Dkt. No. 56.*

### **III. Discussion<sup>2</sup>**

#### **A. Standard of Review**

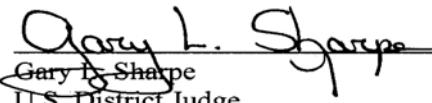
The Court reviews the objected-to findings and recommendations in a magistrate judge's report-recommendation *de novo*, and will accept the report's uncontested parts unless they are "clearly erroneous." See 28 U.S.C. § 636(b)(1)(A),(C); *Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900 F.2d 522, 525 (2d Cir. 1990). The court adopts the summary judgment standard as it is correctly articulated in Judge DiBianco's Report-Recommendation. *Dkt. No. 55.*

#### **B. Report-Recommendation**

For the reasons stated in Judge DiBianco's well-articulated and thorough Report-Recommendation, this court adopts it in its entirety. The Defendants' Motion for Summary Judgment is **GRANTED** and the Plaintiff's entire Complaint is **DISMISSED** with respect to each Defendant.

**IT IS SO ORDERED.**

September 28, 2005  
Albany, New York

  
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Gary L. Sharpe  
U.S. District Judge

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<sup>2</sup> The court adopts the factual summary in Judge DiBianco's Report-Recommendation, and assumes familiarity with the facts alleged in Kelley's complaint. *Dkt. No. 1; Dkt. No. 55.*